

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 510 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

ABDULLA AKBARALI & CO.

Appearance:

MR RM VIN for Petitioners

MR TH SOMPURA for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/07/1999

ORAL JUDGEMENT

Respondent of this appeal was doing some business in explosive substance at Mahuva. It had purchased 5,000/- aluminium electric detonators from M/s. Abdulhusein M. Alabuxji of Nagpur. The goods were consigned from Nagpur to Mahuva on 15.2.1974. The railway receipt was despatched by the consignor to the plaintiff through the Bank at Bhavnagar. The goods in question reached at Mahuva Railway Station on or about

20.4.1974 in two cases. The plaintiff found two cases in broken condition and having suspected shortage, the plaintiff thereupon asked for open delivery which was granted and in presence of panchas the delivery was affected to the plaintiff on 30.8.1974, whereby 3675 pieces of detonators were found short. Shortage certificate and the panchnama was drawn. The plaintiff i.e. present respondent served the Railway Administration with claim notice under sec.78-B of the Railways Act, 1890 (hereinafter referred to as 'the Act'), on 3.9.1974, which was followed by statutory notice under sec.80 of the Code of Civil Procedure. On non-compliance, the respondent filed a suit in the trial court for the recovery of an amount of Rs.3,297.75p for the short delivery of 3675 pieces of detonators and Rs.576/- as interest by way of damages.

2. Defendants i.e. Union of India representing Western Railway Administration and the Union of India representing Central Railway Administration. Both the defendants were duly served, but defendant no.1 failed to appear while defendant no.2 appear and contested the suit on various grounds. The legality of the suit notice under sec.78(B) was also challenged. It was contended that the suit is barred by law of limitation. From pleadings of the parties, the learned trial Judge framed the issues and ultimately accepted the case of the plaintiff and decreed the suit. Being dissatisfied the defendants had filed First Appeal before the District Court at Bhavnagar being Regular Civil Appeal No.13 of 1978, wherein, two points were raised for determination. The first is whether the suit is barred by law of limitation under sec.78-B of the Act, and whether the plaintiff was entitled to Rs.548.45p as interest by way of damages. The learned First Appellate Court determined both the issues in the negative. Being aggrieved, this Second Appeal is filed by the original defendants.

3. Learned advocate Mr.R.M.Vin was heard on behalf of the appellants. He placed reliance on sec.78-B of the Act. Sec.78-B runs as under:

"78-B Notification of claims to refunds of overcharges and to compensation for losses -

A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or

compensation has been preferred in writing by him
or on his behalf -

(a) to the railway administration to which
the animals or goods were delivered to be
carried by railway, or

(b) to the railway administration on whose
railway the destination station lies, or
the loss, destruction, damage or
deterioration occurred,

within six months from the date of the delivery
of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry
made in writing from, or any complaint made in
writing to, any of the railway administrations
mentioned above by or on behalf of the person
within the said period of six months regarding
the non-delivery or delay in delivery of the
animals or goods with particulars sufficient to
identify the consignment of such animals or goods
shall, for the purposes of this section, be
deemed to be a claim to the refund or
compensation."

4. Mr. Vin argued that the only question of
limitation which has arisen and that is also the
substantial question of law in this appeal. Mr. Vin
argues that the substantial question of law will have to
be decided would be as envisaged by sec.78-B of the Act,
whether the claim is time barred. Mr. Vin emphasised on
wording employed under sec.78-B "within six months from
the date of the delivery of the animals or goods for
carriage by railway." Mr. Vin argues that the analogy of
law of limitation as applied by the First Appellate Court
cannot be applied here. Here is the case where by virtue
of sec.78-B claim of losses must be brought to the notice
of the railway administration within six months from the
date of the delivery of the animals or the goods for
carriage by railway. The material date for the starting
point of limitation as contended by Mr. Vin, would be the
date of delivery of the goods to consignee i.e. to the
railway administration. In this case, admittedly the
goods were consigned on 15.2.1974, and the notice under
sec.78-B of the Act, was served on the railway
administration on 3.9.1974, admittedly beyond the period
of six months of the consignment of the goods to the
Railway Administration and hence the suit was apparently
time barred as contended by Mr. Vin. Mr. Vin has placed

reliance on a decision of High Court of Bombay in the matter of Union of India Vs. M/s.K.T.Rizvi and Brothers as reported in AIR 1985 Bombay 84, wherein in similar set of facts it has been held that the starting point of limitation could not be from the date the goods reached at the destination, but the starting point of limitation would only be the date on which the consignment was entrusted to the railway administration and that was the mandate of sec.78-B of the Act. In the above decision of the High Court of Bombay, two set of views of different High Courts are referred to and ultimately disproving view of the learned Single Judge of the same High Court it was decided that the notice under sec.78-B of the Act must be served within six months from the date on which the goods were delivered for carriage and starting point of limitation would not be from the date of the goods delivered to the consignee.

5. The crucial point therefore has arisen in the context of sec.78-B of the Act, that when the limitation starts. The High Court of Bombay in judgment referred to above has taken a view after considering the definition of "railway" and definition of "railway administration", that the different meanings have been given by the Act to the two different expressions and while prescribing the period of limitation section does not refer to railway administration, but refers to delivery of animals or goods by railways and, therefore, the High Court of Bombay, in the above referred judgment observed as under:-

"It is therefore difficult to agree with the Learned Judge view in the Union of India Vs. M/s. Cutpiecewala when he regarded the words "carriage by railway" as merely qualifying the words "animals or the goods", because the learned Judge has not considered the different meanings given by the Act to the two expressions "Railway" and "Railway Administration" while reaching this conclusion." In CRA No.123 of 1969 Union of India Vs. M/s. Cutpiecewala, decided on 4.10.73, learned Single Judge of High Court of Bombay had taken different view then taken by learned Single Judge of High Court of Bombay in this matter of Union of India V/s. K.T.Rizvi."

In this matter, it was also argued before the learned Single Judge of High Court of Bombay that, by this interpretation, persons claiming compensation from railways will suffer the hardship because sometimes this

six months period if covered under the transit. This was negatived by the learned Single Judge by an observation that this hardship could be mitigated by the provision of sec.78-B, wherein, a person claiming compensation is entitled to ask for information regarding the goods.

6. I am in respectful disagreement with the view expressed by the learned Single Judge of the High Court of Bombay in the above mentioned case i.e. Union of India Vs. K.T. Rizvi. A statute when provides a ban or limits the rights of parties to file claims never intends to deprive a party from claiming at all. Even statute of limitation only put certain conditions and limits the period in which the claim should be filed by the parties. It can never be a purpose of any law or enactment to deprive a party of his right to claim compensation. Now if we examine the issues from this angle, if the view expressed by the learned Single Judge of the High Court of Bombay in the above mentioned case is accepted, then in some cases if the six months period is covered under a transit and if consignee gets a short delivery after the period of six months from the date of delivery to railway, he would not be entitled to claim any compensation at all which would lead to consequences of depriving him of his valuable right to claim. To have a remedy for a civil right is fundamental and natural right of a citizen. Even very far stretched interpretation of a statute cannot impute an intention on legislature to deprive citizens of their fundamental and natural rights to claim compensation before court of law. If that be so, then undoubtedly this will amount to causing gross injustice to the citizens. Therefore there cannot be an intention of legislature to deprive citizens of their natural rights to have redress before the court of law and to do injustice to the citizen. These rights can be circumscribed so far as the period of limitation is concerned, but the citizen cannot be deprived of their rights to have redress absolutely. This cannot be the objectives of any statute even statute prescribing period of limitation or even specially enacted provision like sec.78-B. Examining the scheme of law of limitation, it is manifest that starting point of limitation is a point of time on which point the party litigating is accrued with the right to file a suit. The purpose of law of limitation is expectation from litigant to be vigilant because the law would not help to a person who are lazy and negligent about their own rights. The purpose of law of limitation is not to deprive a person from his right to claim absolutely. Otherwise also while interpreting a statute, the interpretation which substantiate the cause of justice must be accepted and interpretation which

perpetuate injustice must be rejected by the Courts of Law. Therefore, sec.78-B is to be read and interpreted with reference to the analogy which is universally applicable to the law of limitation and, hence, it must be held that the words "carriage by railway" must be construed to be merely qualifying the words "animals or the goods" and it could not be qualifying the words "the date of delivery of the goods". In Union of India Vs. Firm Ramdas Amritlal Pali as reported in AIR 1965 Rajasthan p.127, in Union of India Vs. Nirmal Kumar Promode Kumar as reported in AIR 1964 Patna page 392 and in the matter of Amarchand Pannalal Vs. Union of India as reported in AIR 1955 Assam 221 respectively. The High Court of Rajasthan, the High Court of Patna and the High Court of Assam have taken the above mentioned view and it appears to me that the view is reasonable and acceptable with reference to the respective rights of the parties. A person claiming compensation for the short delivery can know the fact regarding the short delivery sometimes only after the six months from the delivery of the goods to the railway administration and if the sec.78-B is interpreted to mean "six months from the date of delivery to railway", then such person would lose his right to claim compensation absolutely without any fault on his part and such interpretation would cause injustice to such party which could never be the intention of legislature. Even the proviso of sec.78-B would not come to his help in these circumstances and hence, it is required to be held that with reference to sec.78-B the starting point of limitation for the short delivery would be the date on which the short delivery is made to the person claiming compensation or short delivery or damage is made known to person claiming.

7. The First Appellate Court has taken the support of a decision of the Supreme Court in the matter of Bootamal Vs. Union of India as reported in AIR 1962 Supreme Court 1716, basing on Article 31, of the law of limitation, the Supreme Court has held that the meaning of "when the goods ought to be delivered" in Article 31 is that the time would run after elapsing of reasonable time, on the expiry of which delivery ought to have been made. In my view, to understand the issue of limitation, the trial court has rightly taken the support to the above mentioned Supreme Court decision.

8. In this view of the matter, I specifically hold that the starting point of limitation in this case would be the date on which the delivery was effected to the plaintiff i.e. 30.8.1974 or atleast 20.4.1974 when the plaintiff came to know that the goods in question were

being delivered short and on 3.9.1974 the notice under sec.78-B was served upon the railway administration, the suit therefore was clearly within the prescribed period of limitation.

9. In this view of the matter, the appeal stands dismissed with no order as to costs.

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